

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RA KARRIE WYNN,

Plaintiff,

v.

WARDEN, SOUTHERN CORRECTIONAL  
FACILITY, *et al.*,

Defendants.

Civil Action 2:18-cv-619

Judge Algenon L. Marbley

Magistrate Judge Chelsey M. Vascura

**REPORT AND RECOMMENDATION**

Plaintiff, Ra Karrie Wynn, a state inmate who is proceeding without the assistance of counsel, brings this civil rights action under 42 U.S.C. § 1983 against Ronald Erdos, the Warden at Southern Ohio Correctional Facility, and Dr. McCafferty, the medical supervisor at Southern Ohio Correctional Facility, alleging that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. This matter is before the Court for the initial screen of Plaintiff's Complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A to identify cognizable claims and to recommend dismissal of Plaintiff's Complaint, or any portion of it, which is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2); *see also McGore v. Wrigglesworth*, 114 F.3d 601, 608 (6th Cir. 1997). Having performed the initial screen, for the reasons that follow, the undersigned **RECOMMENDS** that the Court **DISMISS** this action pursuant to § 1915(e)(2) for failure to state a claim on which relief may be granted.

## I.

According to the Complaint, in 2003, Plaintiff began experiencing a variety of health issues, including periodic diarrhea, headaches, changes in his complexion, and fatigue, after he had a sexual encounter with another inmate, who Plaintiff later learned has human immunodeficiency virus (“HIV”). Plaintiff represents that despite complaining about these symptoms in 2003, he was not tested for HIV until 2009, at which time the test results came back negative. Plaintiff alleges that he has continued to experience a variety of symptoms and that although the prison medical staff has provided treatment for the symptoms, they have not made “a real effort to find a root cause.” (Pl.’s Compl. 6, ECF No. 3.)

Plaintiff alleges that in August 2017, he pretended to swallow a piece of a razor so that he could be transferred to a different medical facility so that he could “deman[d] to be given a proper H.I.V. and vitals testing.” (*Id.*) Plaintiff represents that he was consequently placed in a “dry cell” and placed on a liquid diet before being transferred to Lucasville prison for psychological assessment. Plaintiff contends that he should have instead been “granted access” to a state-sponsored or charity-ran medical lab. In terms of relief, Plaintiff ask that this Court order that he “be tested by a[n] outside specialist dealing in disease control.” (*Id.* at 8.)

Plaintiff attaches Informal Complaint Resolution (“ICR”) and Notification of Grievance (“NOG”) forms that he filed in which he makes many of the same allegations. In one such ICR, Plaintiff states that he has “no confidence in any of the H.I.V. testing being conducted . . . .” (*Id.* at 12.) A November 29, 2017 Disposition of Grievance Plaintiff attaches to his Complaint reflects that Plaintiff’s grievance was denied. (*Id.* at 14.) That Disposition of Grievance states that Plaintiff’s tested negative for HIV, Hepatitis A, Hepatitis B, and Hepatitis C on July 18, 2017, and advises Plaintiff that he has not yet submitted a health request at Southern Ohio

Correctional Facility (“SOCF”) but that he should do so if is having skin or headache issues.

(*Id.*)

## II.

Congress enacted 28 U.S.C. § 1915, the federal *in forma pauperis* statute, seeking to “lower judicial access barriers to the indigent.” *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). In doing so, however, “Congress recognized that ‘a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.’” *Id.* at 31 (quoting *Neitzke v. Williams*, 490 U.S. 319, 324 (1989)). To address this concern, Congress included subsection (e) as part of the statute, which provides in pertinent part:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

\* \* \*

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or . . . .

28 U.S.C. § 1915(e)(2)(B)(i) & (ii); *Denton*, 504 U.S. at 31. Thus, § 1915(e) requires *sua sponte* dismissal of an action upon the Court’s determination that the action is frivolous or malicious, or upon determination that the action fails to state a claim upon which relief may be granted. *See Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (applying Federal Rule of Civil Procedure 12(b)(6) standards to review under 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii)).

To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must satisfy the basic federal pleading requirements

set forth in Federal Rule of Civil Procedure 8(a). Under Rule 8(a)(2), a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Although this pleading standard does not require “‘detailed factual allegations,’ . . . [a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action,’” is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Further, a complaint will not “suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). Instead, to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, “a complaint must contain sufficient factual matter . . . to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). Facial plausibility is established “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* In considering whether this facial plausibility standard is met, a Court must construe the complaint in the light most favorable to the non-moving party, accept all factual allegations as true, and make reasonable inferences in favor of the non-moving party. *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008) (citations omitted). The Court is not required, however, to accept as true mere legal conclusions unsupported by factual allegations. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). In addition, the Court holds *pro se* complaints “‘to less stringent standards than formal pleadings drafted by lawyers.’” *Garrett v. Belmont Cnty. Sheriff’s Dep’t*, No. 08-3978, 2010 WL 1252923, at \*2 (6th Cir. Apr. 1, 2010) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

### III.

Because Plaintiff has failed to plead plausible claims for relief against the only two named Defendants, SOCF Warden Erdos and SOCF Medical Supervisor Dr. McCafferty, the undersigned recommends that the Court dismiss this action pursuant to 28 U.S.C. § 1915(e)(2).

In order to plead a cause of action under § 1983, a plaintiff must plead two elements: “(1) deprivation of a right secured by the Constitution or laws of the United States (2) caused by a person acting under color of state law.” *Hunt v. Sycamore Cmty. Sch. Dist. Bd. of Educ.*, 542 F.3d 529, 534 (6th Cir. 2008) (citing *McQueen v. Beecher Cmty. Sch.*, 433 F.3d 460, 463 (6th Cir. 2006)). To sufficiently plead the second element, a plaintiff must allege “personal involvement.” *Grinter v. Knight*, 532 F.3d 567, 575 (6th Cir. 2008) (citation omitted). This is because “§ 1983 liability cannot be imposed under a theory of *respondeat superior*.” *Id.* (citation omitted). Thus, to hold a supervisor liable under § 1983, a plaintiff “must show that the official at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct . . . .” *Everson v. Leis*, 556 F.3d 484, 495 (6th Cir. 2009). Here, Plaintiff’s Complaint provides insufficient factual content or context from which the Court could reasonably infer that Defendants Warden Erdos or Dr. McCafferty were personally involved in any violation of Plaintiff’s rights. In addition, the Court is unable to discern what specific actions these Defendants took that could suffice to form the basis of a plausible claim under § 1983. He generally alleges that he has been treated by Dr. McCafferty, but does not indicate what particular actions Dr. McCafferty took or failed to take that form the basis of his claims. Rather, he alleges more generally that the “medical staffs of several prisons” have not provided him with the medical care to which he believes he is entitled. (*See* Compl. 6, ECF No. 3.) For this reason, it is **RECOMMENDED** that the Court **DISMISS** Plaintiff’s claims pursuant to § 1915(e)(2).

Even if, however, Plaintiff had alleged that it was Dr. McCafferty who has refused his requests for outside testing, the undersigned would recommend dismissal because Plaintiff has failed to plead a facially plausible medical indifference claim.

It is well established that “[t]he Eighth Amendment forbids prison officials from unnecessarily and wantonly inflicting pain on an inmate by acting with deliberate indifference toward [his] serious medical needs.” *Jones v. Muskegon Cty.*, 625 F.3d 935, 941 (6th Cir. 2010) (internal quotations omitted). A claim for deliberate indifference “has both objective and subjective components.” *Alsbaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011). The United States Court of Appeals for the Sixth Circuit has explained:

The objective component mandates a sufficiently serious medical need. [*Blackmore v. Kalamazoo Cty.*, 390 F.3d 890, 895 (6th Cir. 2004).] The subjective component regards prison officials’ state of mind. *Id.* Deliberate indifference “entails something more than mere negligence, but can be satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Id.* at 895–96 (internal quotation marks and citations omitted). The prison official must “be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 896 (internal quotation marks and citation omitted).

*Barnett v. Luttrell*, 414 F. App’x 784, 787–88 (6th Cir. 2011); *see also Jones*, 625 F.3d at 941 (“[T]he prison official must have acted with a state of mind similar to recklessness. Thus, to prove the required level of culpability, a plaintiff must show that the official: (1) subjectively knew of a risk to the inmate’s health, (2) drew the inference that a substantial risk of harm to the inmate existed, and (3) consciously disregarded that risk.” (citations omitted)).

The Sixth Circuit has also noted that in the context of deliberate indifference claims:

“[W]e distinguish between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment.” *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976). Where a prisoner alleges only that the medical care he received was

inadequate, “federal courts are generally reluctant to second guess medical judgments.” *Id.* However, it is possible for medical treatment to be “so woefully inadequate as to amount to no treatment at all.” *Id.*

*Alspaugh*, 643 F.3d at 169. *See also Santiago v. Ringle*, 734 F.3d 585, 590 (6th Cir. 2013) (“If the plaintiff’s claim, however, is based on the prison’s failure to treat a condition adequately . . . the plaintiff must place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment.” (internal quotation marks and citation omitted)). Moreover, “when a prison doctor provides treatment, albeit carelessly or inefficaciously, to a prisoner, he has not displayed a deliberate indifference to the prisoner’s needs, but merely a degree of incompetence which does not rise to the level of a constitutional violation.” *Id.* at 591 (quotation marks and citation omitted).

Nothing in Plaintiff’s Complaint or its attachments reveals that Dr. McCafferty—or any other prison official—was aware of facts from which they could infer that Plaintiff faced a substantial risk of serious harm and that they consciously disregarded that risk. To the contrary, Plaintiff acknowledges that he received a negative HIV test in 2009, and the materials he attaches to his Complaint reflect that in July 2017, he tested negative for HIV, Hepatitis A, Hepatitis B, and Hepatitis C. (*See* Compl. 6, 12, ECF No. 3.) Moreover, Plaintiff acknowledges that he has been treated for the symptoms about which he has complained. Consistently, the materials he attaches to his Complaint reflect that as of July 2017, he had not submitted a health request to SOCF, and he was advised to do so if he was experiencing skin or headache issues. (*See* Compl. 14, ECF No. 3.) Under these circumstances, the prison officials’ alleged refusal to allow Plaintiff to obtain the disease testing he demands from the specific outside facilities he identifies fails to state a claim for medical indifference. *See, e.g., Owens v. Hutchinson*, 79 F. App’x 159, 161 (6th Cir. 2003) (“A patient’s disagreement with his physicians over the proper

medical treatment alleges no more than a medical malpractice claim, which is a tort actionable in state court, but is not cognizable as a federal constitutional claim.”); *Apanovitch v. Wilkinson*, 32 F. App’x 704, 707 (6th Cir. 2002) (“[A] difference of opinion between [a prisoner] and the prison health care providers and a dispute over the adequacy of [a prisoner’s] treatment . . . does not amount to an Eighth Amendment claim.”). Thus, the undersigned alternatively **RECOMMENDS** that the Court **DISMISS** Plaintiff’s action pursuant to § 1915(e)(2) for failure to plausibly allege medical indifference claims.

#### **IV.**

For the reasons set forth above, it is **RECOMMENDED** that this action be **DISMISSED** for failure to state a claim pursuant to § 1915(e)(2).

The Clerk is **DIRECTED** to send a copy of this order to the Ohio Attorney General’s Office, 150 E. Gay St., 16th Floor, Columbus, Ohio 43215.

#### **PROCEDURE ON OBJECTIONS**

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).



The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

**IT IS SO ORDERED.**

/s/ Chelsey M. Vascura  
CHELSEY M. VASCURA  
UNITED STATES MAGISTRATE JUDGE